REMARKS

Claims 1-20 are pending.

Drawings

The indication that the drawings filed on February 12, 2003 were accepted, is noted.

Foreign Priority

While the Office Action stated, in section 12(b) (PTOL-326) that some of the foreign priority documents were received, in 12(-3) it was noted that the priority documents were received in the national stage application.

It is understood that both of the Israel documents were received in the national stage application from the International Bureau.

Interview

The courtesy of the Examiner in conducting an interview on June 8, 2004 is appreciated.

The Interview Summary correctly summarizes the interview. Also, at the interview the U.S. Patent applied in the last rejection was also discussed. It was understood as set forth in the Interview Summary that the Examiner may provide a new ground of rejection based on EP 0469296. Also, as summarized in the Interview Summary, if claims 1 and 7 were made to include the feature of the spacer 130 containing the passage 112 as explained in the last

sentence on page 5 of the specification, this would place the application in condition for allowance. Also this amendment, even if submitted after final, would be entered. Of course, it was understood that new art may be cited to show this feature.

Reply to Rejections

First Rejection

Claims 1-16 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly pointing out and distinctly claim the subject matter, which Applicant regards as the invention. This rejection, in view of the amendments to the claims, is traversed.

The claims have been amended and are in proper form under 35 U.S.C. § 112. Additionally, some further amendments have been made of an editorial nature to alleviate the concerns of the Examiner regarding the wording in claim 1 as explained in the interview noted above.

Before discussing the specific traversal of the rejection, a summary of the references is set forth as follows:

Summary of WO '400

The method and device disclosed in WO '400 are intended for packaging perishable goods such as red meat. The goods are held wrapped within a flexible web 5, which is placed within a package consisting of two halves, i.e. a base 1 and a rigid lid

3. The web is made of gas permeable material held over the goods 7 so the goods are held to the base 1 of the package. A suitable gas mixture is introduced in the package in the space between the lid and the flexible web stretched over the gods. The gas is retained within the package and can permeate the flexible web and to preserve red color of the goods 7.

The gas mixture, employed in WO '400 is not an inert replacements gas, which is introduced between the goods and flexible web (as in the present invention in the context claimed) but a high oxygen gas mixture, which is deliberately introduced between the rigid lid and the flexible web. This gas mixture is intended to interact with the meat and to render the meat its red color. In order to introduce the gas mixture into package a chamber means 67 is employed, in which the package resided during the stages of evacuating of air and supplying the gas mixture. The method and apparatus disclosed in WO '400 provide that the flexible web 5 is held between a pair of web holding means 65 and is stretched towards the goods 7 so as to be in contact with the goods and wrap it as the upper lid 3 is moved to close the package. During introducing the gas there is no confined space provided between the flexible web and the goods (as in the present invention in the context claimed).

Summary of US '101

First of all, the US '101 reference refers to the same dual-lid scheme, which, as explained *supra*.

The US '101 reference concerns packaging, storing and shipping of meat products in a low-oxygen environment for extended shelf-life and then displaying for consumer sale in a relatively high-oxygen environment such that the meat is caused to "bloom" into a red color just before placed in a retail display case. The invention described in US '101 provides the package with a discrete, dual, removable film. The first film being a gas permeable film covering the package in immediate vicinity thereto and the second one being a gas impermeable film, laying over the first film. The upper film provides barrier to oxygen during storing and shipping and may be then removed to expose the lower film to ambient oxygen, when it is required to place the package with meat product for display.

The package method of US '101 comprises positioning the first, continuous, gas permeable, flexible web over the package, securing a portion thereof to a flange of the package to enclose the product, elevating a portion of the web to facilitate its further severing and then severing the web at the elevation portion to separate it from the remainder of the web. The method comprises also evacuating of air from the package and filling the package with a flushing gas, which is lower in oxygen

content than air. This step is carried out within a closed chamber, connected to a source of vacuum and of flushing gas. The step of evacuating and flushing is carried out after the gas-permeable web is positioned over the package, however before it is secured thereto. After the gas-permeable web has been secured and severed a second, continuous, gas-impermeable web is positioned over the package and then secured to the flange of the package and severed.

It can be assumed that apparently no distance is provided between the first gas-permeable web and the second web and that the step of evacuating and filling by flushing gas becomes possible at least partly due to permeability of the first web.

It was asserted that US '101 teaches in col. 2, lines 10-13 that the first and the second film can be integrally formed into a single lid forming film. The relevant passages of US '101 merely state that dual-lid packages schemes can employ either a single, peelable film which delaminates into permeable and impermeable portions or separate discrete permeable and impermeable films. No details are provided how this single film is designed.

Specific Reasons for the Traversal

Initially, there is no *prima facie* case of obviousness established because even combining the references, the structure

that has now been specifically claimed is not shown and/or there would be no motivation to provide the structure claimed without benefit of Applicant's disclosure as a template in restructuring the art.

The present claimed invention is not based on the dual-lid scheme since it is not intended for rendering red color to meat by virtue of its exposure to high oxygen gas. The present claimed invention does not employ two lids, one of them being flexible web, which is gas permeable and the other one being solid lid (as in WO '400). In the present claimed invention employed is a single lid, which is a flexible film which is gas impermeable. The film is held above the goods so as to leave confined space for introducing replacement gas therein. The film is gas-impermeable flexible film; the foodstuff is exposed to a low-oxygen replacement gas, which purpose is to preserve the foodstuff from oxidation. The replacement gas is introduced into confined space between the film and the foodstuff.

Therefore, the present invention refers to a single-lid scheme and one skilled in the art would not be motivated to employ WO '400 since:

a) there is no teaching, incentive or motivation in WO '400 suggesting this; and

b) it would be absolutely unnecessary, totally irrelevant and even forbidden to use two-lid scheme of WO '400 for a foodstuff, which should not degrade in presence of oxygen.

One skilled in the art would not be motivated to use teaching of US '101 (two films, one of which is gas permeable) in the present invention (single film, which is gas impermeable in it entirety). furthermore, one skilled in the art would not be motivated to combine US '101 with WO '400 because at least for the following reasons:

a) neither WO '400 nor US '101 contains any teaching, motivation or incentive suggesting to combine them and to use such a combination for sealing foodstuff according to the single-lid (membrane), which is gas-impermeable;

b) combining of US '101 with WO '400 would render method and apparatus of WO '400 inoperable. In US '101, there employed two continuous flexible films, which are attached closely one to another. WO '400 employs two lids, one of them being continuous, gas permeable, flexible film and the other being solid, impermeable lid. The flexible film and the solid lid are spaced one from another.

In summary, there is no suggestion in the two reference applied to use solely a single gas impermeable membrane together with a replacement gas that is nourished. With respect to claims

4, 5, and 6, as these depend on claim 1, they are patentable for at least the same reasons as base claim 1.

For the reasons set forth above, the Examiner is requested to reconsider and withdraw the rejection of the claims under 35 U.S.C. § 103.

Second Rejection

Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over WO '400 in view of Noel, et al. (USP 5,718,101) as applied to claim 1 above and further in view of Grune, et al. (USP 5,071,667). This rejection is traversed.

Claim 2 is dependent on claim 1. As explained above, the subject matter claimed is not obvious over the first two references cited. The addition of Grune, et al. does not cure the innate deficiencies of a rejection based on the first two references.

Third Rejection

Claims 7-16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over WO '400 (WO 91/03400).

A discussion of WO '400 has been presented *supra* and is incorporated herein.

Again, WO '400 uses a two-lid system which has already been discussed *supra*. For one skilled in the art, would not change

the apparatus of WO '400 for sealing foodstuff which should not interact with the environment.

Claim 7 explicitly mentions that the container of the present invention has a rim fitted with a closure wherein said container is not filled entirely by the product such as a residual space remains between the product and the rim. This residual space can be filled with an inert gas. In WO '400, when product 7 is stored within the base 1 of the package, there is no residual space between the outer edge 11 (rim) of the base and the product.

Also, claim 7 has been amended to provide "solely a single flat flexible closure-forming substantially a gas-impermeable membrane". Also, claim 7 contains the structure that the gas to be inserted can be inert replacement gas which would be inconsistent with the reference. Accordingly, as explained previously, there is no *prima facie* case of obviousness established.

Claims 8-16 are dependent either directly or through intervening claims on claim 7 and are considered patentable at least for the same reasons as base claim 7.

For the reasons set forth above, the Examiner is requested to reconsider and withdraw the rejection of the claims under 35 U.S.C. § 103.

New Claims

New claims 17-20 have been added. These claims are dependent claims and are considered patentable at least for the same reasons as their base claims.

Conclusion

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Elliot A. Goldberg (Reg. No. 33,347) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicant(s) respectfully petition(s) for a one (1) month extension of time for filing a reply in connection with the present application, and the required fee of $110.00 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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